

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1615 of 2016
and
C.M.P.No.12213 of 2016

M/s.National Insurance Company Limited,
Branch Office-II, Jawaharlal Nehru Street,
Puducherry-605 001.

...Appellant

/versus/

1.M.Shanthi
2.K.Shanmugam

...Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the Judgement and Decree dated 20.09.2010 made in M.C.O.P.No.951 of 2008 on the file of the Motor Accident Claims Tribunal/Ist Additional Subordinate Judge at Cuddalore.

For Appellant

: Mrs.R.Sreevidhya
for Mr.R.Ravichandran

For Respondents

: Mr.M.Devaraj for R1
No appearance for R2

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellant and the first respondent.

2. It is a case filed by the Insurance Company, being aggrieved by fixing the responsibility to compensate the injured/victim, who sustained injury while travelling in the Tractor insured under the Insurance Company. The Tribunal on considering the facts of the case, has calculated a compensation of Rs.2,73,000/- (Rupees Two Lakhs Seventy Three Thousand Only) with interest 7.5%. Aggrieved over the same, the appeal is filed on the following grounds:

(i) The accident occurred when the claimant tried to get down from the Tractor attached with Trailer. The Trailer was not insured under the appellant/Insurance Company.

(ii) The injured person is an unauthorised passenger, as far as the tractor insured under them is concerned.

(iii) The driver of the tractor had no valid license.

3. For the above said reasons, the appellant contended that there is no liability on the part of the Insurance Company. If at all anything to be paid for the accident, it is the responsibility of the vehicle owner, who has allowed the driver to drive his vehicle without proper driving license and allowed an unauthorised passenger to travel in the tractor for agricultural purposes.

4. The learned counsel for the first respondent would contend that the injured was an agricultural coolie. When he was returning home after completing the agricultural work, he sustained injury, due to the negligence of the driver of the tractor. If at all there is any violation of the policy condition, the insured can recover the compensation amount from the owner of the vehicle, after satisfying the injured. Further, referring the Tribunal order, the learned counsel would submit that there are catena of judgements fixing liability on the Insurer to pay the injured in case of violation of policy condition, where only the tractor is insured and not the trailer.

5. On considering the rival submissions made by the respective counsels, this Court is of the view that the Motor Vehicles Act's provision for compensation has to be liberally considered but not contrary to the law and the terms of the contract. This is a case, where the claimant had sustained injury while travelling in the Tractor attached with an uninsured Trailer. Further, the driver of the tractor had no valid driving license. In such circumstances, even while ordering pay and recovery for policy violation, the Insurance Company cannot be said totally liable, to pay compensation since part of the vehicle namely Trailer was not insured.

6. From the evidence, this Court finds that the claimant who was travelling in the Trailer, tried to get down from the moving vehicle and fell down. In such circumstances, the liability on the appellant/Insurance Company was only restricted to 50% with liberty to recover from the vehicle owner after satisfying the injured.

7. Accordingly, the award is modified to the effect that the appellant /

Insurance Company shall pay a sum of Rs.1,36,500/- with interest at 7.5% p.a from the date of petition till the date of deposit and then recover the same from the vehicle owner.

8. From the records it is seen that, on 05.08.2016, in C.M.P.No.12213 of 2016, this Court has directed the Insurance Company to deposit 50% of the award amount with proportionate accrued interest and costs, less the amount already deposited, if any to the credit of M.C.O.P.No. 951 of 2008 within a period of six weeks.

9. The learned counsel for the appellant referring to the order passed by this Court in C.M.P.No.12213 of 2016 dated 05.08.2016, would submit that 50% award amount with accrued interest has already been deposited and the claimant has withdrawn the same. If it is so, there is no further liability on the part of the appellant, in view of the modified order passed by this Court in this Civil Miscellaneous Appeal. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No order as to costs.

Dr.G.JAYACHANDRAN,J.

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10. The claimant, who is the first respondent herein, is entitled to proceed against the vehicle owner for recovery of the balance 50% of the award passed by the Tribunal. Consequently, connected miscellaneous petition is closed.

13.10.2020

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Index : Yes/No

Internet : Yes/No

To

The Motor Accident Claims Tribunal/ Ist Additional Subordinate Judge,
Cuddalore.

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